

U.S. Bank NA v Leventhal

2019 NY Slip Op 33209(U)

October 25, 2019

Supreme Court, New York County

Docket Number: 850235/2018

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 32

Justice

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INDEX NO. 850235/2018

U.S. BANK NA, SUCCESSOR TRUSTEE TO BANK OF AMERICA, NA, SUCCESSOR IN INTEREST TO LASALLE BANK NA, AS TRUSTEE, ON BEHALF OF THE HOLDERS OF WAMU MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-AR17,

MOTION DATE N/A

MOTION SEQ. NO. 001

Plaintiff,

- v -

SONIA LEVENTHAL A/K/A SONIA M. LEVENTHAL, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, UNITED STATES OF AMERICA, CITY OF NEW YORK ENVIRONMENTAL CONTROL BOARD, CITY OF NEW YORK PARKING VIOLATIONS BUREAU, CITY OF NEW YORK TRANSIT ADJUDICATION BUREAU, JOHN DOE, SAID NAME BEING FICTITIOUS, IT BEING THE INTENTION OF PLAINTIFF TO DESIGNATE ANY AND ALL OCCUPANTS OF PREMISES BEING FORECLOSED HEREIN, AND ANY PARTIES,

DECISION + ORDER ON MOTION, ORDER OF REFERENCE

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66

were read on this motion to/for JUDGMENT - SUMMARY

The motion by plaintiff for summary judgment and to appoint a referee is granted.

Background

This foreclosure action arises out of a property owned by defendant Leventhal located at 123 East 91st Street in Manhattan. Plaintiff claims that Leventhal took out multiple loans, starting in 2001. In 2017, she entered into a loan modification agreement that adjusted the principal balance owed to over \$3.4 million. Plaintiff contends that Leventhal has not made a payment since January 1, 2018.

In opposition, Leventhal argues that the motion is premature, plaintiff lacks standing and that plaintiff did not negotiate in good faith about a potential settlement. In reply, plaintiff points out that it offered Leventhal a repayment plan, which she ultimately rejected and, therefore, negotiated in good faith.

Discussion

The Court grants the motion. As an initial matter, plaintiff attached the notes to the complaint (*see* NYSCEF Doc. No. 2). This establishes plaintiff's standing to prosecute this action (*Bank of New York Mellon v Knowles*, 151 AD3d 596, 596-97, 57 NYS3d 473 [1st Dept 2017]). Moreover, the Court cannot find that plaintiff acted in bad faith—CPLR 3408 settlement conferences were held (*see* NYSCEF Doc. No. 31) and a repayment plan offered by plaintiff was rejected by Leventhal. The fact that Leventhal did not like the settlement offered is not evidence of bad faith. The Court also finds that no discovery is necessary because plaintiff has demonstrated it has standing and that Leventhal defaulted on her payments.

Accordingly, it is hereby

ORDERED that the motion by plaintiff for summary judgment against defendant Sonia Leventhal a/k/a Sonia M. Leventhal is granted and her answer and affirmative defenses are severed and dismissed; and it is further

ORDERED that plaintiff is awarded a default judgment against all non-appearing defendants; and it is further

ORDERED that Roberta Ashkin, Esq. with an address of 300 East 42nd St 14th floor NY NY 10017 646-729-8520 is hereby appointed Referee in

accordance with RPAPL § 1321 to compute the amount due to Plaintiff and to examine whether the tax parcel can be sold in parcels; and it is further

ORDERED that the Referee may take testimony pursuant to RPAPL § 1321; and it is further

ORDERED that by accepting this appointment the Referee certifies that he is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to §36.2 (c) (“Disqualifications from appointment”), and §36.2 (d) (“Limitations on appointments based upon compensation”), and, if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall immediately notify the Appointing Judge; and it is further

ORDERED that, pursuant to CPLR 8003(a), and in the discretion of the court, a fee of \$350 shall be paid to the Referee for the computation of the amount due and upon the filing of his report and the Referee shall not request or accept additional compensation for the computation unless it has been fixed by the court in accordance with CPLR 8003(b); and it is further;

ORDERED that the Referee is prohibited from accepting or retaining any funds for himself or paying funds to himself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED that plaintiff shall forward all necessary documents to the Referee within 30 days of the date of this order and shall *promptly* respond to every inquiry made by the referee (promptly means within two business days); and it is further

ORDERED that plaintiff must bring a motion for a judgment of foreclosure and sale within 30 days of receipt of the referee’s report; and it is further

ORDERED that if plaintiff fails to meet these deadlines, then the Court may *sua sponte* vacate this order and direct plaintiff to move again for an order of reference and the Court may

sua sponte toll interest depending on whether the delays are due to plaintiff's failure to move this litigation forward; and it further

ORDERED that "John" Leventhal (first name refused), John Doe (name refused-occupant) and Jane Doe (name refused-occupant) be substituted for the John Doe defendants, and the caption shall read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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U.S. BANK NA, SUCCESSOR TRUSTEE TO
BANK OF AMERICA, NA, SUCCESSOR IN
INTEREST TO LASALLE BANK NA, AS
TRUSTEE, ON BEHALF OF THE
HOLDERS OF WAMU MORTGAGE PASS-
THROUGH CERTIFICATES, SERIES 2005-
AR17,

Plaintiff,

v.

SONIA LEVENTHAL A/K/A SONIA M.
LEVENTHAL, NEW YORK STATE
DEPARTMENT OF TAXATION AND
FINANCE, UNITED STATES OF
AMERICA, CITY OF NEW YORK
ENVIRONMENTAL CONTROL BOARD,
CITY OF NEW YORK PARKING
VIOLATIONS BUREAU, CITY OF NEW
YORK TRANSIT ADJUDICATION
BUREAU, JOHN LEVENTHAL (FIRST
ANME REFUSED), JOHN DOE (NAME
REFUSED-OCCUPANT), JANE DOE
(NAME REFUSED-OCCUPANT),
Defendant(s).

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and it is further

on or before 11-20-19

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the General Clerk's Office (60 Centre

ap
HON. ARLENE P. BLUTH

Street, Room 119), who are directed to mark the court's records to reflect the parties being substituted pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address (ww.nycourts.gov/supctmanh)]; and it is further

ORDERED that Plaintiff shall serve a copy of this Order with notice of entry on all parties and persons entitled to notice, including the Referee appointed herein.

Next Conference: March 31, 2020 @ 2:15 p.m. If a motion for judgment of foreclosure and sale has been filed, plaintiff may seek an adjournment of the conference. Please consult this part's rules for information on how to obtain an adjournment. If a motion has been made, then a conference is required to explore the reasons for the delay.

10/25/19
DATE

ARLENE P. BLUTH, J.S.C.
HON. ARLENE P. BLUTH

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input checked="" type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: